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10

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION

12 RESIDENCE MUTUAL INSURANCE
13 COMPANY, as Subrogee of MARIZOL
HUDSON.

14 Plaintiff.

15

16 BROAN-NUTONE, LLC, a Delaware
17 corporation; NUTONE, INC., a Delaware
corporation; and DOES 1 through 25,
Inclusive.

Defendants.

Case No.

NOTICE OF REMOVAL

[28 U.S.C. SECTION 1441 - Diversity Jurisdiction]

20 TO THE HONORABLE COURT, TO PLAINTIFF, AND TO ITS
21 ATTORNEYS OF RECORD:

22 PLEASE TAKE NOTICE that pursuant to 28 U.S.C. Sections 1332, 1441,
23 and 1446, Defendant, BROAN-NUTONE, LLC (also sued erroneously as NUTONE,
24 INC.) (“Defendant”), hereby gives notice of the removal of the action, *Residence*
25 *Mutual Ins. Co. v. Broan-NuTone, LLC, et al.*, and Does 1 to 25 inclusive, Case No.
26 STK-CV-UPL-2023-5045 (“State Court Action”), which is currently pending in the
27 Superior Court of California, San Joaquin County, to this United States District

1 Court for the Eastern District of California, Sacramento Division, on the basis of
2 diversity of citizenship.

3 In support of such removal, Defendant states as follows:

4 1. On May 17, 2023, Plaintiff RESIDENCE MUTUAL INSURANCE
5 COMPANY (“Plaintiff”) filed a Complaint in the Superior Court of California,
6 County of San Joaquin under Case No. CV-UPL-2023-5045 (the “State Court
7 Action”). A true and correct copy of the Summons and Complaint is attached as
8 **Exhibit A** to the Declaration of Frances P. Brower filed concurrently herewith. *See*
9 Declaration of Frances P. Brower, ¶ 2.

10 2. Defendant first received the Complaint when it was served on May 23,
11 2023. Declaration of Frances P. Brower, ¶ 3.

12 3. Defendant filed and served an Answer to the Complaint in the State
13 Court Action on June 20, 2023, a true and correct copy of the Answer is attached as
14 **Exhibit B** to the Declaration of Frances P. Brower filed concurrently herewith. *See*
15 Declaration of Frances P. Brower, ¶ 4. A Notice of Filing of Answer in State Court
16 Action is filed concurrently herewith.

17 4. There are no other pleadings on file in the State Court Action at the
18 time of this Removal. Declaration of Frances P. Brower, ¶ 4.

19 5. Pursuant to 28 U.S.C. Section 1332, this Court has original jurisdiction
20 over the Complaint. Specifically, “[t]he district courts shall have original
21 jurisdiction of all civil actions where the matter in controversy exceeds the sum or
22 value of \$75,000 exclusive of interests and costs, and is between ... citizens of
23 different States.” 28 U.S.C. § 1332(a).

24 6. Complete diversity exists because Plaintiff and the Defendant, whose
25 citizenship is properly considered, are citizens of different states.

26 7. Upon information and belief, at the time this action was filed and at the
27 time this Notice of Removal is filed, Plaintiff Residence Mutual Insurance Company
28

1 was and is organized under the laws of the State of California. *See Declaration of*
2 *Frances P. Brower, ¶ 7 and Ex. A, ¶¶ 1-2.*

3 8. At the time the State Court Action was filed and at the time this Notice
4 of Removal is filed, Defendant was and is a Delaware limited liability company with
5 its principal place of business in Hartford, Wisconsin. See *Johnson v. Columbia*
6 *Properties Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006) (holding that a limited
7 liability company is a citizen of every state of which its owners/members are
8 citizens). Declaration of Frances Brower, ¶ 5. The sole member of the Defendant is
9 Nortek, Inc. with 100% ownership interest in the Defendant's business. Nortek, Inc.
10 is a Delaware corporation. It is a holding company affiliated with the Nortek family
11 of companies that operate from Missouri. Nortek is headquartered in Missouri.
12 Missouri is also home to Nortek's finances, payroll, and human resources
13 operations, which are directed from its offices located in O'Fallon, Missouri.
14 Additionally, Nortek's physical corporate assets are in Missouri. *Id.* Defendant is
15 comprised of no other members. *Id.*; see also *Hertz Corp. v. Friend*, 559 U.S. 77,
16 92-93 (2010) (defining a corporation's principal place of business as the
17 corporation's "nerve center" – the place "where the corporation's officers direct,
18 control and coordinate the corporation's activities"). Thus, Defendant is a citizen of
19 Delaware and Missouri.

20 9. Plaintiff's Complaint names as Defendants Does 1 to 25. Defendant is
21 informed and believes, and on that basis allege, that none of these fictitiously named
22 defendants have been served with a copy of the Complaint or Summons. *See*
23 Declaration of Frances P. Brower, ¶ 6. Thus, these fictitiously named defendants are
24 not parties to this action. For purposes of removal, "the citizenship of defendants
25 sued under fictitious names shall be disregarded." 28 U.S.C. § 1441(b)(1).

26 10. The amount in controversy exceeds the statutory threshold of \$75,000,
27 exclusive of interest and costs. The amount in controversy for jurisdictional
28 purposes is determined by the amount of damages or the value of the property that is

1 the subject of the action. *Hunt v. Washington State Apple Advertising Comm'n*, 432
2 U.S. 333, 347-48 (1977); *Meisel v. Allstate Indem. Co.*, 357 F. Supp. 2d 1222, 1225
3 (E.D. Cal. 2005). Here, Plaintiff has alleged that the amount in dispute exceeds the
4 statutory threshold of \$75,000. Plaintiff's amount in controversy is \$319,880.94.
5 See Declaration of Frances Brower, ¶¶ 2 and 8, Ex. A, ¶ 20.

6 11. Because there is complete diversity between Plaintiff and Defendant
7 and the amount in controversy exceeds the jurisdictional threshold of \$75,000,
8 exclusive of interest and costs, diversity jurisdiction exists in this action.

9 12. This case is a suit of a wholly civil nature brought in California State
10 Court. Pursuant to 28 U.S.C. Section 1441(a), this civil action may be removed by
11 Defendant to this Court. Because Plaintiff filed the State Court Action in the
12 County of San Joaquin, the United States District Court for the Eastern District of
13 California, Sacramento Division, is the appropriate venue for removal of the State
14 Court Action because it is the "district and division embracing the place where such
15 action is pending." See 28 U.S.C. §§ 1441(a), 1391(a).

16 13. Accordingly, based on the foregoing, this Court has original
17 jurisdiction over the Complaint, and removal to this Court from the County of San
18 Joaquin Superior Court is proper, pursuant to 28 U.S.C. Sections 1332 and 1441,
19 respectively.

20 14. Pursuant to 28 U.S.C. Section 1446(b), this Notice of Removal is
21 timely filed within thirty days after Defendant ascertained that the case is one which
22 is removable.

23 15. Pursuant to 28 U.S.C. Section 1446(d), Defendant will promptly
24 provide written notice of removal of this action to Plaintiff, and will promptly file a
25 copy of this Notice of Removal with the Clerk of the San Joaquin County Superior
26 Court.

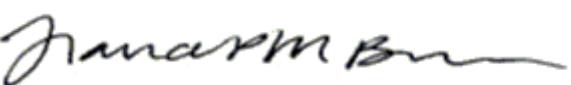
27 16. The only defendants who, upon information and belief, have been
28 served and whose citizenship is properly considered, have filed this Notice of

1 Removal or consent to removal of this action. *See* Declaration of Frances P.
2 Brower, ¶ 9.

3 WHEREFORE, Defendant respectfully requests that this Court assume
4 jurisdiction over this action in accordance with 28 U.S.C. §§1332, 1441, and 1446.
5

6 DATED: June 21, 2023

HAIGHT BROWN & BONESTEEL LLP

7 By: 
8

9 Krsto Mijanovic
10 Frances P. Brower
11 Attorneys for BROAN-NUTONE, LLC (also
12 sued erroneously as NUTONE, INC.)
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PROOF OF SERVICE

Residence Mutual Insurance Company as subrogee of Marizol Hudson
v.
Broan-Nutone, LLC, a Delaware corporation, et al.
LASC Case No. STK-CV-UPL-2023-0005045

STATE OF CALIFORNIA, COUNTY OF ORANGE

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Orange, State of California. My business address is 2030 Main Street, Suite 1525, Irvine, CA 92614.

On June 21, 2023, I served true copies of the following document(s) described as **NOTICE OF REMOVAL** on the interested parties in this action as follows:

10 Timothy E. Cary, Esq.
11 Law Offices of Robert A. Stutman, P.C.
12 1260 Corona Pointe Court
Suite 306
Corona, CA 92879

Tel.: (951) 387-4700
Fax: (951) 963-1298
Email: caryt@stutmanlaw.com

*Attorneys for Plaintiffs,
RESIDENCE MUTUAL
INSURANCE COMPANY as
Subrogee of MARIZOL HUDSON*

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed above and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Haight Brown & Bonesteel LLP for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at Irvine, California.

BY CM/ECF NOTICE OF ELECTRONIC FILING: I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on June 21, 2023, at Irvine, California.

Jacqueline Araujo
Jacqueline Araujo